

IN THE CLAIMS:

The pending claims are listed in the attached:

Appendix A: Pending claims as marked for changes with respect to the issued patent pursuant to 37 CFR §1.173(d).

R E M A R K S

Reconsideration of the rejections is respectfully requested.

The status of the claims is as follows:

Amended:	None
Cancelled:	None
New:	None
Pending:	1-9, 11-16
Allowed:	None

The requested amendment to the continuing data has been made.

The requested copy of the patent (or affidavit of loss), and supplemental declaration shall be filed upon receiving indications of allowability.

Prior to addressing the more substantive rejection, Applicant respectfully notes that "chimeric" in claim 3 was corrected in an amendment filed June 12, 2001. Enclosed are copies of the requested documents listed on the face of US Patent 5,698,197.

Recapture Doctrine

Claims 9 and 11-16 stood rejected under 35 U.S.C. §251 as allegedly running afoul of the recapture doctrine, based on the effective cancellation (for no reason of record) of original claims 1 and 2 pursuant to an Examiner's Amendment dated May 29, 1997. Applicant respectfully traverses.

The recapture doctrine was well summarized in In re Clement, 131 F.3d 1464, 1470 (Fed. Cir. 1997)², with the summary including (with emphasis added):

² A copy of In re Clement is attached.

(1) [I]f the reissue claim is as broad or broader than the canceled or amended claim in all aspects, the recapture rule bars the claim; (2) **if it is narrower in all aspects, the recapture rule does not apply**, but other rejections are possible; (3) if the reissue claim is broader in some aspects, but narrower in others, then: (a)...; (b) if the reissue claim is narrower in an aspect germane to prior art rejection, and broader in an aspect unrelated to the rejection, the recapture rule does not bar the claim...

As the discussion below will show, the present claims are narrower than original claims 1 and 2. Thus, the recapture rule does not apply.

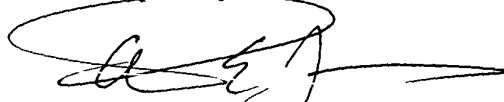
Original claims 1 and 2 are no narrower than is reflected in original claim 2. The highly refined binding feature now recited clearly causes claim 9 (and all the claims depending therefrom) to recite an antibody that is more narrowly defined than that recited in cancelled original claims 1 and 2. Accordingly, the recapture rule does not apply.

Conclusion


In light of the above discussion and amendments, it is respectfully submitted that the claims are in condition for allowance. The issuance of a Notice of Allowance is earnestly solicited.³

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Respectfully submitted,



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³ FEE DEFICIENCY

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